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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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No. 772

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LINDSAY-STRATHMORE IRRIGATION DISTRICT,  
*Appellant,*

*vs.*

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES  
APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED,  
ET AL.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA.

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APPELLANTS' REPLY TO THE MOTION TO DISMISS  
OR AFFIRM.

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JAS. R. MCBRIDE,  
GUY KNUPP,  
*Counsel for Appellant.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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No. 772

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IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE  
IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR  
CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READ-  
JUSTMENT OF ITS DEBTS.

LINDSAY-STRATHMORE IRRIGATION DISTRICT  
AND UNITED STATES OF AMERICA,

vs.

*Appellants,*

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES  
APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED;  
MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES  
APPOINTED BY THE WILL OF KATHERINE BEKINS, DECEASED;  
J. R. MASON, JAMES IRVINE, A. HEBER WINDER,  
AS TRUSTEE FOR EVA A. PARRINGTON TRUST; C. A. MOSS  
AND JAMES H. JORDAN,

*Appellees.*

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**BRIEF OF APPELLANT IN OPPOSITION TO MOTION  
TO DISMISS OR AFFIRM JUDGMENT.**

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Appellant, Lindsay-Strathmore Irrigation District, under  
the provisions of Chapter X of the Uniform Bankruptcy

Act filed in the District Court a petition for confirmation of a plan for the composition and readjustment of its debts. A motion to dismiss the petition was made upon the ground that the act of Congress under which the petition was filed is violative of the Federal Constitution. The motion to dismiss was granted upon the stated ground. A direct appeal to this court under statutory authority (August 24, 1937, C. 754, Sec. 2, 50 Stats.) has been taken from the judgment of dismissal.

A motion to dismiss the appeal or affirm the judgment has been noted. The ground of the motion is that the question involved in the appeal presents no substantial federal question. Prior decisions of this court (*Ashton v. Cameron County Water Improvement District No. 1*, 298 U. S. 513, 56 Sup. Ct. 892; *Waterford Irrigation District v. Covell*, 300 U. S. 682, 57 Sup. Ct. 753; *Merced Irrigation District v. Bekins*, 58 Sup. Ct. 30) declaring unconstitutional a prior act of Congress (Chapter IX of the Bankruptcy Act) are urged as decisive of the questions here involved.

Appellant, Lindsay-Strathmore Irrigation District, contends that the motion to dismiss or affirm should be denied for the following reasons:

1. The very matter of the controversy directly draws in question and is controlled by the construction and application of the Constitution to an act of Congress, the constitutionality of which has never been passed upon by this court, and it is per se and inherently a Federal question.

*Equitable Life Assurance Society v. Brown* (1902), 187 U. S. 308, 47 L. Ed. 190;

*Swafford v. Templeton et al.* (1902), 185 U. S. 487 at 493, 46 L. Ed. 1005, at 1008;

*Hart v. B. F. Keith Vaudeville Exchange* (1923), 262 U. S. 271, at 273, 67 L. Ed. 977 at 979.

2. This appeal involves the construction and application of the Constitution to an act of Congress subsequently drawn with a view to insure its constitutionality and avoid the infirmities of the previous act as disclosed in the prior decisions cited and relied upon by appellees, and therefore involves and necessitates new analysis and exposition.

*Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, etc., et al.* (1937), 300 U. S. 440, 81 L. Ed. 736;

*Louisville & N. R. R. Co. v. Melton* (1910), 218 U. S. 36 at 49, 54 L. Ed. 921, at 926;

*Milheim v. Moffat Tunnel Imp. Dist.* (1922), 262 U. S. 710 at 716, 67 L. Ed. 1194 at 1199.

3. The prior decisions cited and relied upon by appellees relate to the construction and application of the Constitution to an act of Congress which by its terms is applicable only to political subdivisions.

*In re Imperial Irrigation District* (1936), 87 F. (2d) 355.

The issues presented here involve the construction and application of the Constitution to a later act of Congress which by its terms applies to various and separable taxing agencies and classes of taxing agencies, which agencies may or may not be political, and therefore necessitates and involves the construction and application of the Constitution to the peculiar characteristics of the appellant district. Such district has, by the highest court of the State in which it exists, been held not to be a political subdivision.

*Wood v. Imperial Irrigation District* (1932), 216 Cal. 748, at 753;

*Bettencourt v. Industrial Accident Comm.* (1917), 175 Cal. 559, at 561;

*Tarpey v. McClure* (1923), 190 Cal. 593 at 606.

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The motion to dismiss or affirm should be denied.  
Dated January 19th, 1938.

Respectfully submitted,

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